

Wayne, et al.

U.S.S.N.: 09/664,186

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REMARKS

Claim 3 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants have amended the claims accordingly.

Claims 1 and 2 are rejected under 35 U.S.C. §102(a) as being anticipated by a publication by Wayne, et al. published in *Gene* in 1997. 35 USC 102(a) requires that an invention was known or used by others before the invention thereof by the Applicant for patent. However, the cited reference is authored by Wayne and Shuang-yong Xu who are the named inventors on the present Application. The reference also lists Megan Holden. The accompanying Declaration by Shuang-yong Xu is presented for purposes of showing that Megan Holden is not an inventor but did excellent work as a technical assistant.

Please note that the *Gene* reference was published on August 22, 1997. The filing Application is a Continuation Application and has a priority date of August 14, 1998 which is less than one year after the publication date of the cited reference.

Early and favorable consideration leading to prompt issuance of this Application is earnestly solicited. Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so. Thus,

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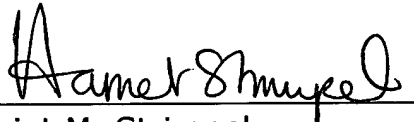
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the Examiner is hereby authorized to call the undersigned collect at the number shown below.

Respectfully submitted,

NEW ENGLAND BIOLABS, INC.

Date: November 3, 2002

A handwritten signature in dark ink, appearing to read "Harriet Strimpel", written over a horizontal line.

Harriet M. Strimpel
(Reg. No.: 37008)
Attorney for Applicant
32 Tozer Road
Beverly, Massachusetts 01915
(978) 927-5054; ext. 373

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MARKED-UP VERSION OF THE CLAIMS

3. (amended) The recombinant plasmid of claim 2, further comprising at least one promoter sequence selected from the group [consisting] of [the] DNA sequences of SEQ ID NO:6 consisting of residues 27-32 of SEQ ID NO:6, residues 50-55 of SEQ ID NO:6, residues 86-90 of SEQ ID NO:6 and residues 109-114 of SEQ ID NO:6.